

**BEFORE THE
CALIFORNIA BOARD OF ACCOUNTANCY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA**

In the Matter of the Application of:

GORDON HUBERT FLATTUM
Tacoma, WA. 98408

Applicant.

Case No. SI-2011-1

OAH No. 2011110127

DECISION AFTER NONADOPTION

Administrative Law Judge Stephen J. Smith, Office of Administrative Hearings, State of California, heard this matter in Sacramento, California on June 6, 2012.

Lorri Yost, Deputy Attorney General, Department of Justice, State of California, represented the California Board of Accountancy.

Gordon Hubert Flattum appeared in pro per.

The record was closed and the matter was submitted on June 6, 2012.

The proposed decision of the Administrative Law Judge was submitted to the California Board of Accountancy on September 18, 2012. After due consideration thereof, the Board declined to adopt said proposed decision and thereafter issued an Order of Non-adoption on December 7, 2012, and subsequently, on January 22, 2013, issued an Order Fixing Date for Submission of Written Argument. Written argument having been received from both parties, the time for filing written argument in this matter having expired, and the entire record, including the transcript of said hearing having been read and considered, the California Board of Accountancy pursuant to Section 11517 of the Government Code hereby makes the following decision:

FACTUAL FINDINGS

1. Patti Bowers made the allegations contained in the Statement of Issues in her official capacity as Executive Officer, California Board of Accountancy (hereinafter "Board"), Department of Consumer Affairs, State of California. The Statement of Issues was filed June 27, 2011. Gordon Hubert Flattum ("Respondent") timely filed a Notice of Defense on Application in response to the Statement of Issues. The Board has jurisdiction to issue, deny the issuance of, or issue on a probationary or conditional basis any license to practice as a certified public accountant (CPA) in the State of California.¹

2. Respondent filed an application with the Board for issuance of a license to practice as a CPA in the State of California that was received by the Board on approximately October 26, 2009. The application was signed by Respondent on October 22, 2009. As part of his application, Respondent provided that he passed the CPA exam in November 1961 and was first licensed as a CPA by the State of Washington in November 1963. Respondent also disclosed federal criminal convictions from March 1993.

3. The Board acted to deny the application on August 13, 2010, and notified Respondent of that fact in writing. Respondent sought review of the propriety of that denial through an evidentiary hearing, leading to the filing of the Statement of Issues and his Notice of Defense on Application.

THE 1991 FEDERAL INDICTMENT

4. Between 1985 and 1987, Respondent worked as a consultant for Melridge, Inc., a Washington Corporation that did business for its own account and through several subsidiaries in the State of Oregon and other states. Common stock in Melridge was publicly traded after its initial public (IPO) and secondary public offerings (SPO). Melridge sold 700,000 shares of common stock to the public on November 16, 1983, through an IPO underwritten by Boettcher and Company, a broker-dealer of securities, netting Melridge approximately \$3,500,000 in proceeds. Financial disclosures were made to the public in association with the IPO. These financial disclosures included filing of SEC forms 10K, 10-Q, audited financial statements and financial statements contained in Melridge annual reports. Melridge initiated a SPO of 900,000 shares of common stock underwritten by the same broker-dealer, resulting in proceeds of approximately \$7 million to Melridge on November 30, 1984. Similar financial disclosures were made in conjunction with the SPO.

5. On or about October 8, 1991, a federal grand jury indicted Respondent in the United States District Court for the District of Oregon, Case No. CR 91-349 and charged him with six counts of violating the laws of the United States. The indictment provides the following relative to Respondent, in pertinent part:

¹ Business and Professions Code sections 480, 5100 and 5110.

COUNT 1

Conspiracy

At all material times:

1. Melridge, Inc. ("Melridge") was a Washington corporation which did business itself and through several subsidiaries in the State of Oregon and elsewhere. The shares of common stock of Melridge were publicly quoted and traded in the over-the-counter National Association of Securities Dealers Automated Quotations ("NASDAQ") National Market System.

2. GEORGE R. HEUBLEIN ("Heublein"), herein, was the President, Chief Executive Officer, and Chairman of the Board of Directors of Melridge. He was also the Principal Executive Officer and the Principal Financial Officer.

3. GORDON H. FLATTUM ("Flattum"), defendant herein, was a consultant to Melridge who principally reported to HEUBLEIN.

4. The Securities and Exchange Commission ("SEC") is an agency of the United States Government which has primary responsibility for the administration and enforcement of the federal securities laws designed to protect investors. Melridge was required to be and was registered with the SEC. Melridge was required to file a report, known as a Form 10-K report, at the close of each fiscal year with the SEC. In addition, Melridge was required to file a quarterly report known as a Form 10-Q, at the close of each fiscal quarter with the SEC. Melridge also issued Annual Reports to Shareholders which were also required to be filed with the SEC.

5. The SEC rules and regulations required that the annual report, Form 10-K, and the quarterly report, Form 10-Q, and the annual reports to stockholders contain information and disclosures regarding the business of Melridge and its subsidiaries, their activities, and their true financial condition, certified by independent auditors. SEC rules also prohibited the misstatement or omission of material facts.

6. On about November 16, 1983, Melridge offered and sold to the investing public 700,000 shares of common stock through an initial public offering underwritten

by Boettcher and Company, a broker and dealer of securities, at \$5.50 per share which generated proceeds to Melridge of approximately 3.5 million dollars.

7. On about November 30, 1984, Melridge offered and sold to the investing public 900,000 shares of common stock through and underwritten by Boettcher and Company, a broker and dealer of securities, at \$8.375 per share which generated proceeds to Melridge of approximately 7 million dollars.

8. On or about April 29, 1986, Melridge offered and sold to the investing public \$30,000,000 of 6 7/8% Convertible Subordinated Debentures through and underwritten by Furman Selz Mager Dietz & Birney and Boettcher & Company, both brokers and dealers of securities, which generated proceeds to Melridge of approximately 29 million dollars.

9. At the time immediately prior to the initial public offering described in paragraph 6 above, GEORGE R. HEUBLEIN owned 975,000 shares of Melridge common stock, the book value of which was approximately \$1.29 per share.

OBJECT OF THE CONSPIRACY

10. Beginning in about June 1983, and continuing through about November 1987, the exact dates unknown, in the District of Oregon and elsewhere, GEORGE R. HEUBLEIN and GORDON H. FLATTUM, defendants herein, did combine, conspire, confederate and agree together among themselves and with others, both known and unknown, to commit the following offenses against the laws of the United States:

A. Submitting false and fraudulent reports including Forms 10-K, Forms 10-Q, and Annual Reports to Shareholders to the SEC in violation of Title 18, United States Code, Section 1001;

B. Using and employing, in connection with the purchase and sale of securities, manipulative and deceptive devices contrary to the rules and regulations of the SEC in violation of Title 15, United States Code, Section 78j (b), 78ff and 17 CFR 240.10b-5;

C. Transporting funds and monetary instruments from a place outside the United States to a place inside the United States to promote securities fraud in violation of Title 18, United States Code, Section 1956 (a) (2).

PURPOSE OF THE CONSPIRACY

11. The purpose of the conspiracy was to conceal from the SEC, the shareholders and bondholders of Melridge, other officers and directors of Melridge, potential investors in Melridge, and others, the true financial condition of Melridge and its subsidiaries and to make it appear that Melridge was in better financial condition than was actually the case; to create an illusion of prosperity for Melridge with earnings and profits stated greater than they actually were; to generate enthusiasm and demand for the shares of common stock of Melridge in the financial markets; to justify and support artificially high, and increasingly higher, quoted and traded prices for such shares during the course of the conspiracy; and to enrich the co-conspirators, particularly HEUBLEIN who personally sold at least 215,700 shares of Melridge stock totaling at least \$2,586,000 during the course of the conspiracy.

MANNER AND MEANS OF THE CONSPIRACY

It was part of the conspiracy that:

12. HEUBLEIN, FLATTUM, and others, created a series of contracts which purported to obligate flower bulb producers to pay license fees and royalties to Melridge at various times in the future. Those contracts were disclosed to Melridge's auditors and treated as accounts receivable and income, and recorded on the books of Melridge. They also created a series of contracts obligating others to purchase flower bulbs from Melridge in the future. These contracts were also disclosed to Melridge auditors and recorded on the Melridge books as accounts receivable and income.

13. For each of the publicly disclosed contracts referred to in paragraph 12 above, HEUBLEIN, FLATTUM, and others created additional secret contracts which were intentionally hidden from Melridge's auditors. These secret contracts contained contingencies which negated the economic benefits of the publicly disclosed contracts, and made their treatment on the books of Melridge improper. Had the secret contracts been disclosed, it would have had a materially negative affect on the stated financial status of Melridge.

14. To create the appearance that Melridge was receiving payments from foreign producers on the accounts receivable mentioned above, HEUBLEIN, FLATTUM, and others secretly caused money to be transferred to a particular

producer in Holland who would then forward the money to Melridge. The funds so received from the producer were fraudulently recorded on the books and records of Melridge as payments on the foreign accounts receivable.

15. In order to help generate the funds transferred to the Holland producer, HEUBLEIN, FLATTUM, and others, caused Melridge to pay certain suppliers substantially more money for the purchase of property and equipment than was actually owed, through the payment of falsely inflated invoices. HEUBLEIN, FLATTUM, and others then caused the suppliers to transfer the excess funds to the Holland producer for "payment" on the foreign accounts receivable.

16. Some of the excess funds generated by the falsely inflated invoices referred to in paragraph 15 above were paid by the supplier to a law firm in Holland, which in turn forwarded these funds and funds from other sources to Melridge. Melridge then treated these funds as payments on the foreign accounts receivable of the bulb producer.

17. HEUBLEIN, FLATTUM, and others, caused certain equipment as described in paragraph 15 above to be recorded as assets on the books of Melridge at the inflated values shown on the false invoices.

18. HEUBLEIN cause funds to be transferred from his coded bank account in Switzerland to the bulb producer in Holland in order for the producer to pay Melridge, thereby furthering the false appearance that the producer was and would continue to pay his "debt" to Melridge.

19. Certain of the contracts referred to in paragraph 12 above required the payment of royalties to Melridge based upon the amount of acreage in production of certain bulbs. HEUBLEIN, FLATTUM, and others created false documentation, purporting to be from an auditing firm in Holland, showing substantially more acreage in production of such bulbs than was true.

20. Contracts with foreign producers, like the ones referred to in paragraph 12 above, provided for payments to Melridge to be made in dutch guilders. Changes in the exchange rate between dollars and guilders caused an increase in the value of those contracts. That increase was reported to the investing public as a foreign currency transaction gain of \$1,412,792 in fiscal year 1986. Because the contracts, as

described in paragraphs 12 and 13 above were improperly recorded, virtually all of the foreign currency transaction gain should not have been recorded.

21. The improper recording of contracts referred to in paragraphs 12 and 13 above, the false payments referred to in paragraphs 14, 15, 16, 17, 18 and 19 above, and the improper reporting of the foreign currency transaction gain referred to in paragraph 20 above, overstated income and assets of Melridge by in excess of \$6,000,000 as of July 31, 1986. This overstatement materially misrepresented the financial picture of Melridge and intentionally misled the investing public.

OVERT ACT

In furtherance of the conspiracy, one or more of the co-conspirators did cause to be committed, among others, the following overt acts.

...

41. On or before May 1, 1985, FLATTUM directed the opening of a bank account at Rabobank Nederland in The Netherlands.

42. Shortly before May 14, 1985, FLATTUM directed a law firm in Holland to transfer \$302,000 to an account at Rabobank.

43. On or about May 14, 1985, FLATTUM directed a bulb producer to forward \$302,000 to Melridge where it was applied to the foreign accounts receivable.

...

48. On or about July 26, 1985, Melridge paid Compas b.v., a Dutch company, 209,532 guilders for equipment. The invoice was falsely inflated by 48,357 guilders at the direction of FLATTUM.

49. On or about September 1, 1985, Melridge paid Prins Greenhouses \$859,600 for greenhouse. The invoice was falsely inflated by \$100,000 at the direction of FLATTUM.

50. On or before September 27, 1985, FLATTUM directed Prins and Compas to transfer funds to a bank account at Rabobank, The Netherlands.

51. On or about September 27, 1985, FLATTUM directed the transfer of approximately \$138,946 to Melridge.

...

55. On or about January 1, 1986 and June 9, 1986, Melridge paid Compas, b.v., a Dutch company, a total of 1,380,635 guilders for equipment. The invoice was falsely inflated by 500,000 guilders as directed by FLATTUM.

57. On or about July 10, September 9 and September 25, 1986, Melridge paid a total of \$873,015 to Prins Greenhouses for greenhouses. The invoice was falsely inflated by \$300,000 as directed by FLATTUM.

68. At or about the end of fiscal years 1984, 1985 and 1986, FLATTUM directed the falsification of acreage documents relating "royalties"; all in violation of Title 18, United States Code, Section 371.

COUNT 2

Securities Fraud

69. The allegations contained in paragraphs one through 21 are hereby repeated and realleged as though fully set forth herein.

70. From on or about June 1983, through November 1987, in the District of Oregon and elsewhere, GEORGE R. HEUBLEIN and GORDON H. FLATTUM, defendants herein, did knowingly and willfully, directly and indirectly, by use of means and instrumentalities of interstate commerce and the mails and the facilities of a national securities exchange, to wit: NASDAQ, did use and employ, in connection with the purchase and sale of securities, that being the common stock of Melridge, Inc., which was publicly quoted and traded in the over-the-counter NASDAQ National Market System, manipulative and deceptive devices and contrivances contrary to the rules and regulations contained in Title 17, Code of Federal Regulations, Section 240.10b-5 violation of Title 15, United States Code, Sections 78j (b) and 78ff.

COUNT 3

False Form 10-K

71. The allegations of paragraph one through 21 inclusive are repeated and realleged as though fully set forth herein.

72. On or about November 13, 1986, in the District of Oregon and elsewhere, GEORGE R. HEUBLEIN and GORDON H. FLATTUM, defendants herein, in a matter

within the jurisdiction of the Securities and Exchange Commission, (SEC), a department and agency of the United States, did willfully and knowingly falsify, conceal, and cover up by trick, scheme, and device material facts, and did make false, fictitious, and fraudulent statements and representations in an annual Form 10-K report of Melridge, Inc. for the fiscal year ending July 31, 1986, filed with the SEC; in violation of Title 18, United States Code, Sections 1001 and 2.

COUNT 4

False Form 10-Q

73. The allegations of paragraph one through 21 inclusive are repeated and realleged as though fully set forth herein.

74. On or about December 15, 1986, in the District of Oregon and elsewhere, GEORGE R. HEUBLEIN and GORDON H. FLATTUM, defendants herein, in a matter within the jurisdiction of the Securities and Exchange Commission, (SEC), a department and agency of the United States, did willfully and knowingly falsify, conceal, and cover up by trick, scheme, and device material facts, and did make false, fictitious, and fraudulent statements and representations in a quarterly Form 10-Q report of Melridge, Inc. for first quarter ending October 31, 1986, filed with the SEC; all in violation of Title 18, United States Code, Sections 1001 and 2.

COUNT 5

False Annual Report to Shareholders

75. The allegations contained in paragraph one through 21 inclusive are repeated and realleged as though fully set forth herein.

76. On or about February 27, 1987, in the District of Oregon and elsewhere, GEORGE R. HEUBLEIN and GORDON H. FLATTUM, defendants herein, in a matter within the jurisdiction of the Securities and Exchange Commission (SEC), a department and agency of the United States, did willfully and knowingly falsify, conceal, and cover up by trick, scheme, and device material facts, and did make false, fictitious and fraudulent statements and representation in an Annual Report to Shareholders for fiscal year ending July 31, 1986, filed with the SEC; all in violation of Title 18, United States Code, Sections 1001 and 2.

COUNT 6

Money Laundering

77. On or about August 27, 1987 and continuing through August 31, 1987, in the District of Oregon and elsewhere, GEORGE R. HEUBLEIN and GORDON H. FLATTUM, defendants herein, did transport, transmit and transfer and cause to be transported, transmitted and transferred, approximately \$700,000.00 by wire from Algemene Bank Nederland in Zurich, Switzerland through Rabobank Nederland in Sassenheim, the Netherlands into the account of Melridge, Inc. at the Oregon Bank, Portland, Oregon, with the intent to promote the carrying on of fraud in the sale of securities; all in violation of Title 18, United States Code, Sections 1986(a)(2) and 2.

...

(Excerpt from State's Ex. 3, pp.1-16.)

THE FEDERAL CONVICTION

6. On or about March 8, 1993, after Respondent was found guilty following a jury trial of all six felony counts identified in the indictment, Respondent was adjudged guilty of these crimes by the United States District Court for the District of Oregon. The crimes for which Respondent was convicted included multiple violations of federal law. (18 U.S.C. § 371 [conspiracy]; 17 C.F.R. § 240.10b-5 and 15 U.S.C. §§ 78j(b) and 78ff [securities fraud]; 18 U.S.C. §§ 1001 and 2 [false Form 10-K]; 18 U.S.C. §§ 1001 and 2 [false Form 10-Q]; 18 U.S.C. §§ 1001 and 2 [false Annual Report to shareholders]; and, 18 U.S.C. §§ 1956(a)(2) and 2 [money laundering].)

7. Respondent was sentenced to the United States Bureau of Prisons for a period of confinement of 37 months, to be served at the federal prison camp at Sheridan, Oregon, and to pay a fine of \$15,000. Respondent was also sentenced to serve a period of supervised release for a period of three years following his release from custody.

OUT OF STATE DISCIPLINE-WASHINGTON STATE BOARD'S ACTIONS

8. Respondent was first licensed as a CPA in the State of Washington in November 1963. On June 15, 1993, the Washington State Board of Accountancy (the "Washington Board") filed a Statement of Charges against Respondent, seeking to revoke or suspend his license as a CPA in the State of Washington. The Washington Board's disciplinary action was based upon the Federal District Court's criminal convictions set forth above.

9. An administrative hearing took place in March 1994. An Administrative Law Judge (ALJ) submitted a written Decision with Factual Findings, Legal Conclusions and a Proposed Order to the Washington Board. The Washington Board adopted the Proposed Decision as its own Final Decision on May 27, 1994. The Washington Board revoked Respondent's CPA license for a period of 10 years from the date of his conviction in the United States District Court, District of Oregon. After the ten-year period, the Decision provided that Respondent could obtain reinstatement upon condition that he meet all of the requirements of an initial applicant for certification as a public accountant, including passing the initial CPA licensing examination and the meeting of all ethical requirements. Respondent appealed this decision unsuccessfully.

10. On February 3, 2009, Respondent petitioned the Washington Board for reinstatement of his license as a CPA. The Washington Board denied the Petition on September 24, 2009. In doing so, the Washington Board found that "...Respondent, in his petition, attempts to minimize the severity of the conduct which led to his conviction and the subsequent revocation of his certification as a certified public accountant." (State's Ex. 5, p. 2, § 2.5.) Respondent requested reconsideration of the denial of his petition. The Washington Board denied his request on October 22, 2009.

RESPONDENT'S TESTIMONY AND EVIDENCE

11. Respondent testified regarding what he considered his qualifications for "the ticket" at hearing. Respondent earned a Bachelor of Science Degree at the University of Oregon in 1960, passing the California CPA exam in San Francisco in 1961. Respondent also taught graduate and upper school accounting in 1964. He also testified regarding his experience working at international CPA firms for approximately seven or eight years and in private practice prior to working as a consultant at Melridge, Inc.. (AR 14:18-25; 15:1-3.)

12. Respondent has completed all requirements of his federal prison sentence. Respondent received written confirmation from the US Department of Justice that his fine and penalties had been paid in full on November 26, 1996. Respondent's confinement was terminated early, and his supervised release was terminated early on December 3, 1996, upon motion of his US Probation Officer who oversaw Respondent's supervised release.

13. Respondent expressed at hearing that "I have stated my remorse." (AR 43:21-22.) However, Respondent steadfastly argued at hearing that he was not responsible for the acts for which he was convicted. Respondent testified that, "[i]n 1993, I was convicted in the Oregon District Federal Court for acts performed by others in the middle '80s, 1983 to '87." (AR 15:4-6). Respondent did not specifically describe or explain what acts he did perform as a consultant during the time period in question. When questioned about charges in the federal indictment attributed to him regarding inflating receipts and falsifying documents, Respondent denied any culpability, alleging

that the United States Attorney had stated "there was no document in the case that was prepared and signed by me. Period. There is nothing." (AR 22:2-5.)

14. Respondent also argued that any of the acts for which he was convicted were not substantially related to the practice of accountancy. He expressed his belief that the Board had no evidence that he had done any work related to being a CPA, stating that the Board's staff, "had absolutely no financial statements or documents or anything that would make someone conclude that I was doing any work as a CPA or that I had done any work that could be construed as substantially relating to performance as a CPA." (AR 23:12-16.) Respondent also testified to his belief that these types of arguments refuted the Washington Board of Accountancy's actions in disciplining his license and denying his reinstatement application. (AR 16:15-25.) Respondent asserted:

And at this point, the State has waged mainly what you call an ad hominem attack based on the indictment. And they have never shown any factual documentation as to any specific act I performed that would be considered substantially related to the practice of accounting. They enjoy bringing up all of the charges because -- even though I didn't do them, it is all they have. They have never produced financial statements, any document I have ever prepared or signed, any SCC report or any other document. (AR 16:6-14.)

15. As a result, Respondent claimed that he never violated his "badge of office as a CPA", and he expressed his opinion that his license should therefore be granted by this Board. (AR 15:24-25; 17:1-10.)

16. Respondent testified regarding his work with Vision Rescue International, a non-profit organization he established in approximately 2005 that is committed to providing new eyeglasses for vision impaired students in other countries such as Guatemala. He provided a Web site entitled "visionrescue.org" that describes the nature and mission of his organization and the population it serves.

17. Respondent also offered three letters of reference dating back to 2009 from CPAs in Washington with whom he has had professional experience. These letters contain, for the most part, similar template language, such as: "I recommend that Gordon Flattum be issued a license to practice as a Certified Public Accountant in the State of California." (See, Resp. Ex. "A"). Respondent also submitted letters of reference from those supportive of his work with Vision Rescue International. However, none of those letters appear to address Respondent's personal rehabilitation efforts in his community before and after his federal conviction.

LEGAL CONCLUSIONS

The Burden of Proof

1. The Administrative Procedure Act (Gov. Code, §§ 11500 et seq.) provides that the burden of proof is upon the applicant seeking licensure. (*Coffin v. Department of Alcoholic Beverage Control* (2006) 139 Cal.App.4th 471, 476-477.) Specifically, Government Code section 11504 states:

"A hearing to determine whether a right, authority, license, or privilege should be granted, issued, or renewed shall be initiated by filing a statement of issues. The statement of issues shall be a written statement specifying the statutes and rules with which *the respondent must show compliance by producing proof at the hearing* and, in addition, any particular matters that have come to the attention of the initiating party and that would authorize a denial of the agency action sought." (Emphasis added.)

2. "Except as otherwise provided by law, the burden of proof requires proof by a preponderance of the evidence." (Evid. Code, § 115.) Respondent therefore bears the burden of proving his case for licensure as a Certified Public Accountant in this State by a preponderance of the evidence.

First Cause for Denial--Crimes and Substantial Relationship

3. Business and Professions Code section 5110 provides, in pertinent part:

(a) After notice and an opportunity for a hearing, the board may deny an application to take the licensing examination, deny admission to current and future licensing examinations, void examination grades, and deny an application for a license or registration to any individual who has committed any of the following acts:

[¶] ... [¶]

(4) Any act that if committed by an applicant for licensure would be grounds for denial of a license or registration under Section 480 or if committed by a licensee or a registrant would be grounds for discipline under Section 5100.

[¶] ... [¶]

4. Business and Professions Code section 480 provides, in pertinent part, as follows:

(a) A board may deny a license regulated by this code on the grounds that the applicant has one of the following:

(1) Been convicted of a crime. A conviction within the meaning of this section means a plea or verdict of guilty or a conviction following a plea of nolo contendere. Any action that a board is permitted to take following the establishment of a conviction may be taken when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal, or when an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under the provisions of Section 1203.4 of the Penal Code.

(2) Done any act involving dishonesty, fraud, or deceit with the intent to substantially benefit himself or herself or another, or substantially injure another.

(3)(A) Done any act that if done by a licensee of the business or profession in question, would be grounds for suspension or revocation of license.

(B) The board may deny a license pursuant to this subdivision only if the crime or act is substantially related to the qualifications, functions, or duties of the business or profession for which application is made.

5. Business and Professions Code section 5100(a) permits the Board to similarly discipline licensees, after notice and hearing, for the following cause:

(a) Conviction of any crime substantially related to the qualifications, functions and duties of a certified public accountant or a public accountant.

6. As stated in Factual Findings numbers 1-6, Respondent was convicted of six counts of violating federal law. Respondent had an opportunity to protest the charges against him in federal court and he was unsuccessful. Respondent is not now free to attack or impeach the judgment of the federal courts in this forum. (*Matanky v. Board of Medical Examiners* (1978) 79 Cal.App.3d 293, 302.) According to the California Supreme Court in *Arneson v. Fox* (1980) 28 Cal.3d 440, 452, convictions are conclusive proof of guilt of the specific offense charged in the indictment:

Appellant continues to assert that administrative discipline would be improper in the absence of any positive proof of his wrongful intent beyond the indictment and nolo conviction themselves. Yet as we have seen, the nolo conviction stands as conclusive proof of appellant's guilt of the specific

offense charged in the indictment. No extrinsic independent evidence thereof need be introduced. Nor is appellant permitted to impeach that conviction.

However, conviction alone will not support a denial of a license unless the crime substantially relates to the qualifications, functions, or duties of the business or profession in question. (Bus. & Prof. Code, § 480 subd. (a)(3); *Arneson v. Fox*, *supra*, 28 Cal.3d at p. 448.)

7. Title 16, California Code of Regulations (CCR) section 99 sets forth the Board's criteria for determining whether those crimes are related to the practice of accountancy. Those criteria are as follows:

For the purposes of denial, suspension, or revocation of a certificate or permit pursuant to Division 1.5 (commencing with Section 475) of the Business and Professions Code, a crime or act shall be considered to be substantially related to the qualifications, functions or duties of a certified public accountant or public accountant if to a substantial degree it evidences present or potential unfitness of a certified public accountant or public accountant to perform the functions authorized by his or her certificate or permit in a manner consistent with the public health, safety, or welfare. Such crimes or acts shall include but not be limited to those involving the following:

- (a) **Dishonesty, fraud, or breach of fiduciary responsibility of any kind;**
- (b) Fraud or deceit in obtaining a certified public accountant's certificate or a public accountant's permit under Chapter 1, Division III of the Business and Professions Code;
- (c) Gross negligence in the practice of public accountancy or in the performance of the bookkeeping operations described in Section 5052 of the code;
- (d) Violation of any of the provisions of Chapter 1, Division III of the Business and Professions Code or willful violation of any rule or regulation of the board. (Bold emphasis added.)

8. The indictment specifically attributes "willful" and knowing acts of falsification and fraud to Respondent, which the jury found had been proven and violated federal law (see e.g., Count 2, ¶ 70 and Count 5, ¶ 76 of the indictment and Factual Findings 5, 6.). A conviction in which an essential element of the crime charged is "willful" or "knowing" acts of dishonesty or fraud demonstrates a character lacking in honesty and integrity. (See e.g., *Harrington v. Department of Real Estate* (1989) 214 Cal.App.3d 394, 403.) Honesty and integrity go to the heart of the profession as the Board understands it today. The Board recognizes that opportunities

for dishonest acts present themselves in all aspects of professional life, and the public must be protected against the practitioner who takes advantage of such opportunities. It is for this reason that the Board's regulation does not compartmentalize where and when the dishonesty and fraud may occur, whether "on or off the job," but rather broadly applies to crimes involving fraud or dishonesty "of any kind." Respondent was convicted of crimes involving fraud, falsification of documents, and money laundering while acting as a consultant for Melridge, Inc., a publicly traded company. These crimes, by their very nature and by Board regulation, are substantially related to the practice of accountancy.

9. Cause exists to deny Respondent's application, based upon sections 5110(a)(4), as that Section interacts with Sections 480 and 5100(a), as alleged in the First Cause for Denial of Application. This finding is based upon Factual Findings 1-7 and Legal Conclusions 1-8.

Second Cause for Denial—Washington State Board's Disciplinary Action

10. Business and Professions Code section 5110 provides, in pertinent part:

(a) After notice and an opportunity for a hearing, the board may deny an application to take the licensing examination, deny admission to current and future licensing examinations, void examination grades, and deny an application for a license or registration to any individual who has committed any of the following acts:

[REDACTED] ... [REDACTED]

(4) Any act that if committed by an applicant for licensure would be grounds for denial of a license or registration under Section 480 or if committed by a licensee or a registrant would be grounds for discipline under Section 5100.

[REDACTED] ... [REDACTED]

11. Business and Professions Code section 5100, subdivision (d) provides as follows:

[REDACTED] ... [REDACTED]

(d) Cancellation, revocation, or suspension of a certificate or other authority to practice as a certified public accountant or a public accountant, refusal to renew the certificate or other authority to practice as a certified public accountant or a public accountant, or any other discipline by any other state or foreign country.

[REDACTED] ... [REDACTED]

12. Cause exists to deny Respondent's application, pursuant to Section 5110, subdivision (a)(4) as it interacts with Section 5100, subdivision (d). Respondent's CPA license was revoked by the Washington State Board of Accountancy in 1994, and he has not been granted reinstatement by that board. The adverse disciplinary action by the Washington Board in 1994 is sufficient to trigger a violation of section 5100, subdivision (d), and generate legal cause to deny the license. This finding is based upon Factual Findings 1-3, 8-10 and Legal Conclusions 10-12.

REHABILITATION

13. Once cause for denial is proved, the applicant must produce proof by a preponderance of the evidence that he or she is rehabilitated to be eligible for licensure. Title 16, California Code of Regulations section 99.1 regarding the Board's criteria for the assessment of rehabilitation is set forth, in pertinent part, as follows:

When considering the denial of a certificate or permit under Section 480 of the Business and Professions Code, the suspension or revocation of a certificate or permit or restoration of a revoked certificate under Section 11522 of the Government Code, the board, in evaluating the rehabilitation of the applicant and his present eligibility for a certificate or permit, will consider the following criteria:

- (1) Nature and severity of the act(s) or offense(s).
- (2) Criminal record and evidence of any act(s) committed subsequent to the act(s) or offense(s) under consideration which also could be considered as grounds for denial, suspension or revocation.
- (3) The time that has elapsed since commission of the act(s) or offense(s) referred to in subdivision (1) or (2).
- (4) The extent to which the applicant or licensee has complied with any terms of parole, probation, restitution, or any other sanctions lawfully imposed against the applicant or licensee.
- ...
- (6) Evidence, if any, of rehabilitation submitted by the applicant or licensee.

The foregoing criteria were used to evaluate Respondent's application.

14. *Nature and severity of the act(s) or offense(s).* Respondent was convicted of crimes involving fraud, falsification of documents, and money laundering while acting as a consultant for Melridge, Inc., a publicly traded company. (Factual Findings 5, 6; Legal Conclusions 6-9.) These crimes, by their very nature, are serious and go to the heart of the profession. Respondent has testified that the acts alleged in the indictment did not involve the use of his CPA "badge." However, there is more to being a licensed professional than mere knowledge and ability. Honesty and integrity are deeply and daily involved in various aspects of the practice. Respondent's crimes reflect a lack of trustworthiness, integrity and honesty.

15. *Criminal record and evidence of any act(s) committed subsequent to the act(s) or offense(s) under consideration.* As discussed, Respondent's criminal record is serious, as demonstrated by the nature and extent of his convictions as well as his 37-month federal prison sentence. However, there is no evidence that Respondent has re-offended or committed other acts that would serve as a further basis for denial of his application.

16. *The time that has elapsed since commission of the act(s) or offense(s).* It has been 30 years since the underlying acts were committed and 20 years since Respondent was convicted. Respondent's CPA license was revoked nearly 19 years ago by the Washington State Board of Accountancy.

17. *The extent to which the applicant or licensee has complied with any terms of parole, probation, restitution, or any other sanctions lawfully imposed against the applicant or licensee.* Respondent has been compliant with all terms of parole, probation or restitution related to this matter.

18. *Evidence of rehabilitation.* Respondent was given the opportunity both at hearing and in argument before the Board to demonstrate that he has been rehabilitated. Although there is no exact formula for rehabilitation, generally, rehabilitation involves a two-step process. The first step is attitudinal, where the individual demonstrates that he understands and accepts that he is responsible for the violations. In short, an individual must show remorse and an understanding that what he or she did was wrong. The second is behavioral, where the individual demonstrates a consistent track record of appropriate behavior over a sufficiently extended period of time. That way, the Board and the public have some assurances that the person can practice with safety to the public.

19. Respondent presented evidence that twenty years have passed since Respondent was convicted of serious federal crimes and he has not re-offended. He has presented evidence that he successfully concluded his prison sentence and fulfilled his obligations upon release from prison. However, the passage of time, early release from prison or parole and the absence of later misconduct is not conclusive proof of rehabilitation.

20. The record reflects that Respondent has not fully embraced his culpability with regard to the crimes for which he was convicted. Respondent's persistent denials of wrongdoing in the face of a federal conviction are of concern to the Board. Such denials show a lack of remorse and lack of awareness of what he did wrong, and render Respondent's testimony regarding his "remorse" and rehabilitation unconvincing. Respondent's failed attempts to regain his CPA license from the Washington State Board of Accountancy also substantiate his lack of awareness and understanding (see, e.g., Factual Finding 10).

21. The reference letters submitted by Respondent are insufficient to overcome the Board's concerns about Respondent's ability to practice safely today. As discussed in Factual Finding 17, the letters fail to inform the Board as to whether Respondent has undergone any form of transformation since the conviction occurred that would tell the Board about Respondent's character as it stands today.

22. Business and Professions Code section 5000.1 provides that protection of the public shall be the highest priority for the California Board of Accountancy. It is for this reason that licensure by the Board is not readily granted. Qualification for licensure must be met and minimum standards continuously satisfied. It is expected that the Board's licensees practice with safety to the public, including practicing with integrity and honesty. Further, the public is protected when professionals know and accept their personal ethical failures, are able to recognize their failures internally, and, know what it takes to achieve appropriate rehabilitation. Respondent has failed to demonstrate any of the foregoing to the satisfaction of the Board.


23. The Board has determined that it is not in the public interest for Respondent to be issued a license to practice, with or without restriction. This finding is based upon all Factual Findings and Legal Conclusions.

ORDER

The application of Gordon Hubert Flattum to the California Board of Accountancy for the issuance of an unconditional license to practice as a Certified Public Accountant in the State of California is DENIED.

This Decision shall become effective on May 15, 2013.

IT IS SO ORDERED this 15th day of April, 2013.


LESLIE LAMANNA
Board President
California Board of Accountancy